

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF CHAPTER 4901:1-41 OF THE
OHIO ADMINISTRATIVE CODE.

CASE NO. 18-1192-EL-ORD

FINDING AND ORDER

Entered in the Journal on February 6, 2019

I. SUMMARY

{¶ 1} The Commission adopts proposed amendments to Ohio Adm.Code 4901:1-41-01, 4901:1-41-02, and 4901:1-41-03, which concern greenhouse gas reporting and carbon dioxide control plans.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. Ohio Adm.Code Chapter 4901:1-41 concerns greenhouse gas reporting and carbon dioxide control planning.

{¶ 3} R.C. 106.03(A) requires the Commission to determine whether:

- (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;
- (b) The rules need amendment or rescission to give more flexibility at the local level;
- (c) The rules need amendment or rescission to eliminate unnecessary paperwork;

- (d) The rules incorporate a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74, and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;
- (e) The rules duplicate, overlap with, or conflict with other rules;
- (f) The rules have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) The rules contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- (h) The rules require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} Additionally, on January 10, 2011, the governor of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, needlessly burdensome, have had negative unintended consequences, or unnecessarily impede business growth.

{¶ 5} Also, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis (BIA) regarding the rules. If there will be an adverse impact on business, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact.

Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 6} By Entry issued on August 14, 2018, the Commission scheduled a workshop to be held at the Commission offices on August 27, 2018, to elicit feedback on the rules and to permit stakeholders to propose their own revisions to the rules for Staff's consideration. The workshop was held as scheduled, but no changes were proposed by stakeholders.

{¶ 7} By Entry issued on November 28, 2018, the Commission ordered all interested parties to file comments concerning the Commission's proposed amendments. FirstEnergy Generation, LLC (FirstEnergy) was the only stakeholder to file comments to Staff's proposals. No reply comments were filed.

B. Consideration of the Comments

{¶ 8} Proposed Ohio Adm.Code 4901:1-41-01(A) amends the definition of "carbon dioxide control planning" to state that a "carbon dioxide control plan" is "a process to measure carbon dioxide emissions and evaluate and implement carbon dioxide control options for an electric generating facility that emits greenhouse gases."

{¶ 9} FirstEnergy contends that Staff's proposed definition of "carbon dioxide control plan" in Ohio Adm.Code 4901:1-41-01(A) expands the scope and meaning of R.C. 4928.68. FirstEnergy asserts that, while R.C. 4928.68 authorizes Commission adoption of rules establishing greenhouse gas emissions (GHG) reporting requirements and plans to control emissions, such authorization does not include adopting rules that order utilities to implement plans reducing GHG. To remain consistent with the meaning and scope of R.C. 4928.68, FirstEnergy concludes, the Commission must strike the words "and implement" from the proposed rule.

{¶ 10} The Commission disagrees with FirstEnergy that the proposed amendment to Ohio Adm.Code 4901:1-41-01(A) expands the scope of R.C. 4928.68. R.C. 4928.68 authorizes the Commission to establish rules regarding GHG reporting and carbon dioxide control

planning. Therefore, Staff's proposed amendments to Ohio Adm.Code 4901:1-41-01(A) should be adopted.

{¶ 11} Proposed Ohio Adm.Code 4901:1-41-02(A) states that rules in Ohio Adm.Code Chapter 4901:1-41 concern GHG reporting and participation in The Climate Registry (TCR), and that the carbon dioxide control plan applies to "each electric generating facility located in Ohio, owned and operated by a public utility subject to the Commission's jurisdiction, and emits" GHG.

{¶ 12} No comments were filed concerning proposed amendments to Ohio Adm.Code 4901:1-41-02(A).

{¶ 13} Proposed Ohio Adm.Code 4901:1-41-03(A) through (C) clarifies that any electric generating facility in Ohio that emits GHG must become a member of TCR, and that a carbon dioxide control plan must be filed with an electric generating facility's long-term forecast report (LTFR).

{¶ 14} FirstEnergy contends that some utilities that are required to develop a carbon dioxide control plan pursuant to proposed Ohio Adm.Code 4901:1-41-03(B) are not obligated to file a LTFR under R.C. 4928.07(A)(7). FirstEnergy urges adoption of language clarifying that only entities required to file a LTFR under Ohio Adm.Code 4901:5-3-01 must also file a carbon dioxide control plan.

{¶ 15} The Commission agrees that proposed language in Ohio Adm.Code 4901:1-41-03(B) needs clarification. The Commission proposes adding language to Ohio Adm.Code 4901:1-41-03(B) stating that "if a public utility is required to submit a long-term forecast report pursuant to rule 4901:5-3-01 of the Administrative Code, the carbon dioxide control plan shall be included with the public utility's long-term forecast, or as otherwise directed by the Commission."

C. Conclusion

{¶ 16} The Commission has considered the matters set forth in Executive Order 2011-01K and R.C. 121.82. With these factors in mind, and upon consideration of Staff's recommendations, the Commission finds that amended Ohio Adm.Code 4901:-14-01, 4901:1-41-02, and 4901:1-41-03 should be adopted.

{¶ 17} The rules are posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us/>. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Finding and Order only. All interested persons are directed to input case number 18-1192 in the Case Lookup box to view the rules, as well as this Finding and Order, or to contact the Commission's Docketing Division to request a paper copy.

III. ORDER

{¶ 18} It is, therefore,

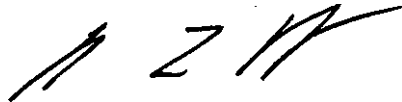
{¶ 19} ORDERED, That amended Ohio Adm.Code 4901:1-41-01, 4901:1-41-02, and 4901:1-41-03 be adopted. It is, further,

{¶ 20} ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with R.C. Chapter 111.15. It is, further,

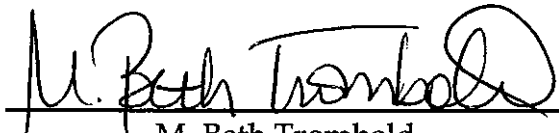
{¶ 21} ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:1-41 shall be in compliance with R.C. 106.03. It is, further,

{¶ 22} ORDERED, That a copy of this Finding and Order be served upon all investor-owned electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, and the Electric-Energy list-serve.

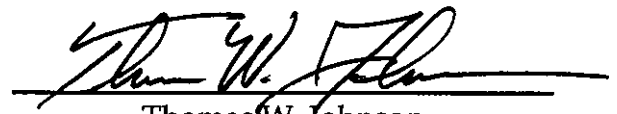
THE PUBLIC UTILITIES COMMISSION OF OHIO



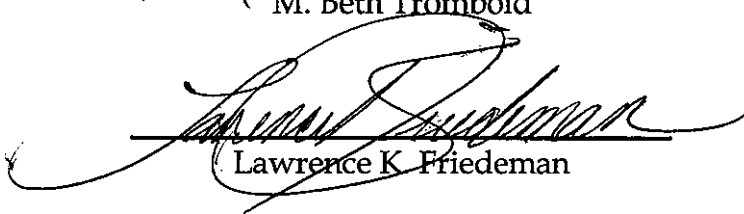
Asim Z. Haque, Chairman



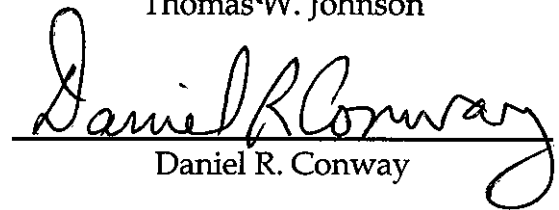
M. Beth Trombold



Thomas W. Johnson



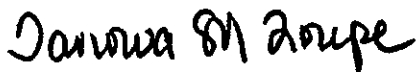
Lawrence K. Friedeman



Daniel R. Conway

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Entered in the Journal

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Secretary

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4901:1-41-01 Definitions.

- (A) "Carbon dioxide control ~~planning plan~~" means the ~~establishment and implementation of a structured, verifiable process including goals, policies, and procedures, to measure carbon dioxide emissions and evaluate and implement carbon dioxide control options on both a for an electric generating facility and a system wide scale over five, ten and twenty year periods that emits greenhouse gases.~~
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "The Climate Registry" means the nonprofit collaboration among North American states, provinces, territories and native sovereign nations, using the website at www.theclimateregistry.org, that sets consistent and transparent standards to calculate, verify, and publicly report greenhouse gas emissions into a single registry.
- (D) "Electric generating facility" means an electric generating plant and associated facilities capable of producing electricity of fifty megawatts or larger.
- (E) "Greenhouse gas" means the emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and/or sulphur hexafluoride.
- (F) "Public utility" means those entities included within the definition of "public utility" set forth in section 4905.02 of the Revised Code.

4901:1-41-02 Purpose and scope.

- (A) This chapter provides rules for the reporting of greenhouse gas emissions, including participation in the climate registry, and carbon dioxide control planning plan requirements for each electric generating facilities within Ohio facility that is located in this state, is owned and operated by a public utility that is subject to the commission's jurisdiction, and emits greenhouse gases, pursuant to section 4928.68 of the Revised Code.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

*****DRAFT - NOT FOR FILING*****

4901:1-41-03 Greenhouse gas reporting and carbon dioxide control planning.

- (A) Unless otherwise directed by the commission, any public utility owning or operating an electric generating facility within Ohio that emits greenhouse gases shall become a participating member in the climate registry and shall report greenhouse gas emissions according to the protocols approved by the climate registry.
- (B) Any public utility that owns or operates an electric generating facility within Ohio that emits greenhouse gases shall file with the commission by April fifteenth of each calendar year an environmental control plan, including a carbon dioxide control planning by including such plan with. If the public utility's utility is required to submit a long-term forecast report pursuant to rule 4901:5-3-01 of the Administrative Code, the carbon dioxide plan shall be included with the public utility's long-term forecast, or as otherwise directed by the commission. A copy of such plan shall also be provided to the director of the Ohio environmental protection agency, or his designee.
- (C) The environmental carbon dioxide control plan shall include all relevant technical information on the current conditions, goals, and potential actions for resource planning or environmental compliance for each electric generating facility within Ohio that emits greenhouse gases. Any technology included in this plan, including clean coal, shall be based upon the most current scientific and engineering design capability of any facility or that has been designed to have the capability to control the emissions of criteria pollutants and carbon dioxide within the parameters of economically feasible best technology.